Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
CIVIL REVISION NO. 60 /2006

REVISIONERS : 1) Smt. Asha Rana, wife of late Umesh Singh Rana, aged about 46 years,

DEFENDATNS

2) Pushpendra Singh Rana, S/o late Umesh Singh Rana, aged about 25 years,

3) Ku. Priya Singh Rana, D/o late Umesh Singh Rana, aged about 24 years,

4) Ku. Pooja Singh Rana, D/o late Umesh Singh Rana, aged about 24 years,

5) Ku. Pragya Singh, D/o late Umesh Singh Rana, aged about 18 years,

All are R/o Sadar Road Ambikapur, police station Ambikapur, Tahsil and District Ambikapur (C.G.)

Versus

RESPONDENTS : 1) Rukhmani Devi, wife of Fotelal, aged about 49

PLAINTIFF

years, occupation Cultivator, R/o Village Darima, Tahsil Ambikapur, Distt. Surguja, (C.G.)

DEFENDANTS : 2) Registrar, Cooperative Societies, Govt. of Chhattisgarh, Raipur, C.G.

3) District Cooperative Land Development Bank Maryadit, through the Manager, Basantlal Road, Ambikapur, Distt. Surgjua, C.G.

4) Sales Officer, Land Development Bank Maryadit, Ambikapur, Surguja (C.G.)

5) Ram S/o Mungeshwar, aged about 23 years,

6) Kutteram, S/o Mungeshwar aged about 21 years,

Both No.5 and 6 are R/o Village Darima, Tahsil Ambikapur, Distt. Surguja (C.G.)

7) Bahadur S/o Mungeshwar aged about 28 years,

8) Kenda, S/o Mungeshwar, aged about 26 years,

Both No. 7 & 8 are R/o Koriya Block Colliery, West Chirimiri, Tahsil Manendragarh, Distt. Koriya, C.G.

9) Rasnath, S/o Jakki Nai, aged about 45 years, R/o village Darima, Tahsil Ambikapur, Distt. Surguja, C.G.

10) Vishnu S/o Sitaram, aged about 22 years, R/o Koriya Colliery Chirimiri, Tahsil Baikunthpur, Distt. Koriya, C.G.

11) Ku. Guddi D/o Sadam, aged about 7 years, minor through guardian respondent No.5, R/o village Darima Tahsil Ambikapur, Distt. Surguja, C.G.

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 60 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

02.05.2006

Shri A.K.Shukla, learned counsel for the applicants.

Heard on admission.

The applicants/defendants have preferred this revision under Section 115 of the Code of Civil Procedure against the order dated 31.12.2005 passed by learned District Judge, Sarguja in Civil Appeal No. 09/04 allowing the appeal of the plaintiffs and setting aside the order dated 08.09.1998 passed by learned Civil Judge, Class-I, Ambikapur in Civil Suit No. 4-A/98 whereby suit of the plaintiffs was dismissed as abated.

Sole plaintiff namely Rukmani Devi had filed a civil suit against the defendants for declaration and perpetual injunction. During pendency of the suit defendant No. 5 Mungeswar died on 10.01.1998. Application for substitution of the deceased/defendant No. 5 was filed by the plaintiff on 30.04.1998 under Order 22 Rule 4 read with Section 151 of the C.P.C. for bringing legal heirs on record. The learned Civil Judge vide order dated 8.09.1998 rejected the said application on the ground that it has been filed beyond 90 days. Against the order of the trial Judge a miscellaneous appeal under Order 43 Rule 1 (k) of the C.P.C. was preferred by the plaintiffs and the learned District Judge by the impugned order allowed the appeal and set aside the order of abatement as against defendant No. 5. Hence, the applicants/defendants have preferred the instant revision against the above order.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 60 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the applicants submits that appeal before the learned District Judge was itself not competent as no appeal lies against the order of rejection of application under Order 22 Rule 4 of the C.P.C. and the impugned order is without jurisdiction. It is argued that from perusal of the application preferred by the applicants for bringing the legal heirs of defendant No.5 on record it is clear that no prayer for setting aside the abatement was made in the said application and therefore in the absence of specific prayer for setting aside the abatement, the order cannot be treated as an order under Order 22 Rule 9 of the C.P.C.

It is further argued that the impugned order passed by the learned District Judge is based on misreading of the judgment of the Supreme Court reported in **2003 AIR SCW 4878** in the matter of **Mithailal Dalsangar Singh and others Vs. Annabai Devram Kini and others**.

I have heard learned counsel for the applicants.

It is settled law that where a party prefers an application for bringing the legal heirs on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement when such application is preferred after the abatement has ensued. This aspect has been elaborately dealt with in the judgment of Mithailal Dalsangar Singh (supra) which has been relied upon by the learned District Judge while passing the impugned order. It is not in dispute that if the application under Order 22 Rule 9 of the C.P.C. for bringing legal representatives of the deceased is rejected, then

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

miscellaneous appeal under Order 43 Rule 1 (k) is maintainable, therefore, the arguments advanced by learned counsel for the applicant that the appeal was not maintainable, cannot be accepted.

It is also settled law that prayer for setting aside the abatement and the dismissal consequent upon an abatement, have to be considered liberally. In the instant case from the facts it appears that defendant No. 5 died on 10.01.1998 whereas application for substitution of his legal heirs was filed on 30.04.1998 i.e. within the period of limitation prescribed for moving an application under Order 22 Rule 9 of the C.P.C.

In the aforesaid circumstances, this Court is of the considered opinion that there is no illegality in the impugned order passed by the learned District Judge in the exercise of his jurisdiction and as such no interference is called for by this Court in the revisional jurisdiction. The revision being devoid of any substance is liable to be dismissed at the motion stage itself and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

khan

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